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C. The Commission Must Make Clear
That Conduct Such as Cablevision's
Will Not Be Tolerated

Finally, Cablevision argues that it only engaged in hard bargaining in pursuit of its admitted objectives to buy CSN and obtain exclusive rights. Cablevision then warns the Commission that if it finds a violation in this case it will open the floodgates to complaints. Answer, p. 5, ¶ 8.

To the contrary, Cablevision is urging the Commission to read Section 616 out of the law. If a cable operator's plea of "hard bargaining" constituted a complete defense, nothing short of a signed confession would ever suffice to establish a violation. The Commission, in adopting its regulations under Section 616, rejected the contention that evidence of "explicit threats" should be required to prove that a cable operator attempted to coerce a grant of exclusive rights:

[W]e believe that actual threats may not always comprise a necessary condition for a finding of coercion. Requiring such evidence would establish an unreasonably high burden of proof that could undermine the intent of Section 616 by allowing multichannel

[Footnote continued from previous page]
other multichannel video programmers, such as DBS, SMATV and LMDS, justifies denying relief (Answer, pp. 4-5, ¶7) must be rejected because it would also render Section 616 a dead letter.

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distributors to engage in bad faith negotiations that apparently would not violate the statute and our regulations simply because explicit threats were not made during such negotiations. In contrast, we believe that Section 616(a)(2) was intended to prohibit implicit as well as explicit behavior that amounts to "coercion."²⁰

These principles govern here. It is crucial that the Commission not allow claims of "hard bargaining" -- a claim that every defendant in a Section 616 case will surely make -- to eviscerate the statute. As the evidence shows, this is not simply a case of hard bargaining; Cablevision has crossed the line.

CONCLUSION

For the reasons set forth above and in CSN's Complaint, the Commission should order Cablevision promptly to carry the Service on all of its systems. In the alternative, if the Commission believes that there

²⁰ In re Implementation of Sections 12 and 19 of The Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, 9 FCC Rcd 2642 at ¶ 18 (1993).

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are any material factual disputes, it should designate this case for a hearing to resolve those disputes.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert Alan Garrett", is written over a horizontal line.

Robert Alan Garrett
Philip W. Horton
Richard L. Rosen
Robert M. Cooper

ARNOLD & PORTER
555 12th Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

Attorneys for Classic Sports
Network, Inc.

Dated: May 12, 1997

CERTIFICATE OF SERVICE

Complainant Classic Sports Network, Inc., by
counsel, hereby certifies that the foregoing
COMPLAINANT'S REPLY TO DEFENDANT'S ANSWER has been
served upon the following individuals on this 12th day
of May 1997 by the method indicated:

Howard J. Symons, Esq.
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(By Hand)

Deborah Klein, Esq.
Assistant Division Chief
Consumer Protection and Competition
Division
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W. -- Room 702D
Washington, D.C. 20554
(By Hand)



Robert M. Cooper

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)

CLASSIC SPORTS NETWORK, INC.,)

Complainant)

v.)

CABLEVISION SYSTEMS CORPORATION)

Defendant.)

File No. _____

SUPPLEMENTAL AFFIDAVIT OF STEPHEN D. GREENBERG

State of New York)

County of New York)

ss:

Stephen D. Greenberg, being duly sworn, hereby
states as follows:

1. My name is Stephen D. Greenberg. I am
President of the complainant in the captioned action,
Classic Sports Network, Inc. ("CSN"). This affidavit is
made in conjunction with CSN's Reply and in response to
the Answer filed by Cablevision Systems Corporation.

2. I have read the Reply in this matter. To the
best of my knowledge, information and belief formed after
reasonable inquiry, the Reply is well grounded in fact and
is warranted under Commission regulations and policies.
The Reply is not interposed for any improper purpose.

Rate Issues

3. Cablevision did not tell CSN that high rates were the reason for its refusal to carry CSN. Answer p. 6, ¶ 11.

MATERIAL REDACTED

4.

MATERIAL REDACTED

5. Cablevision's insistence that its decision to delay the Norwalk, Connecticut launch was based on rate concerns, Answer p. 7, ¶ 13, is contradicted by contemporaneous records. See Complaint at Exhibit 4 (Letter From Stephen Greenberg to Peter Low Dated October 3, 1995). Cablevision concedes that it took extensive steps in anticipation of an imminent launch of the Service in Norwalk, Connecticut before abruptly reversing course. Answer p. 26, ¶¶ 15, 17-18. Rates were not the issue. Cablevision was bothered by its (mistaken) belief that Liberty had an equity interest in CSN and Cablevision did not.

6.

MATERIAL REDACTED

7. Cablevision never discussed the issue of rates with respect to carriage of the Service on its Cleveland systems. Answer p. 7, ¶ 15.

Timing Of The Ohio Launches

8. Cablevision's version of the Ohio launches is not accurate. Answer pp. 8-9, ¶ 18. As indicated by the Digicipher forms for North Olmsted and Berea, Ohio, see Exhibit E to the Reply, both were launched in October 1996, not in April 1997. Thomas Montemagno, Program Manager for Cablevision, never told me that the October launches were a "test" or "preview." Thus, Cablevision's statement that both were launched in April 1997, Answer pp. 8-9, ¶ 18, is inaccurate. Cablevision has in fact agreed to pay CSN for carriage of the Service from October 1996 through April 15, 1997. See Letter from Thomas Montemagno to Steve Greenberg dated

April 28, 1997, attached as Exhibit F to the Reply.

Cablevision's Efforts To Acquire CSN

9. Cablevision's characterization of the discussions with Ed Frazier is not accurate. Answer p. 10, ¶ 22. See Complaint at ¶¶ 10-11. Ed Frazier, on behalf of Liberty, initiated the contact with Rainbow. He did not act at CSN's direction; CSN did not instruct him to explore the possibility of Cablevision investing in CSN. In fact, Liberty and Rainbow were already partners in a number of sports programming ventures including certain regional sports networks and NewSport.

10. Contrary to Cablevision's implications, my meeting with Shuken in September 1996 (Answer pp. 10-11, ¶ 23) had been arranged, at Shuken's request, prior to Sapan's and Ratner's approaching me about purchasing CSN. I did not schedule that meeting with Shuken on the understanding that it was for the purpose of discussing a sale of CSN to Cablevision.

11. Ratner pressed me on the question of selling CSN on October 9. I told him that CSN was not for sale. He pressed me for a price, and I told him I would take the matter to CSN's board of directors. Neither Brian Bedol nor I "pitched" the idea to the board, and the board confirmed that it had no interest in selling to

Cablevision. I confirmed this lack of interest in a sale to Cablevision shortly thereafter. Answer p. 11, ¶ 24.

Carriage Discussions

12. Cablevision incorrectly states that "[n]o one at Rainbow ever discussed carriage issues." Answer p. 21, ¶ 44. In fact, CSN's September 1996 discussions with Shuken and Bair, both executives of Sportschannel New York ("SCNY"), a Rainbow service, specifically focused on carriage of the Service as a wrap-around service to SCNY.

CSN And Other MSOs

13. Cablevision's claims regarding the level of support that the Service has received from the top MSOs (TCI, Time Warner, Continental, Comcast and Cox) is inaccurate. Answer pp. 18-19, ¶ 39. More importantly, the other MSOs' process of evaluating the Service has differed substantially from the process used by Cablevision. Specifically, each of those other five MSOs has engaged in fair and even-handed negotiations with CSN for carriage of the Service on its cable systems around the country. Those negotiations have led to an ever-increasing number of launches of the Service by those MSOs taking into account CSN's rates, channel capacity and all of the factors raised by Cablevision in its Answer. (Of course, the one factor not present in

the negotiations with those other MSOs is a demand for equity and exclusivity as a precondition for doing business). For example, since October 1996 (the last time that Cablevision launched the Service on one of its systems) TCI has added the Service on 20 of its systems and Time Warner has added the Service on 22 of its systems (with both MSOs indicating that more launches are coming in the next several weeks). Likewise, Continental has begun rolling out the Service on all of its New England systems, all of its systems in the Southeast, and selected systems in the Midwest and Western regions (representing over 2 million subscribers in the aggregate). Comcast has added the Service (or plans to do so within the next 60 days) on four of its systems in the Northeast and was previously carrying the Service on its Baltimore system. In addition, Comcast has previewed the Service on more than six other systems and is actively considering launching the Service on those systems. Finally, Cox has added the Service to systems representing well over one million subscribers and plans to add the Service on additional systems, representing approximately one million additional subscribers, within the next 12 months. Among the major MSOs, only Cablevision has refused to consider the Service for launches on additional systems, and it has

done so in the context of its attempts to acquire an equity interest in the Service and/or exclusive distribution rights.

CSN's Carriage On WBIS

14. The argument that CSN's limited carriage on WBIS is a barrier to carriage on Cablevision is not consistent with the facts. Answer p. 3, ¶ 3; p. 14, ¶ 29. Cablevision was aware that this arrangement was of limited duration. See Memorandum To All WBIS/Classic Sports Affiliates From Brian Bedol and Steve Greenberg Dated September 16, 1996 (a copy of which was mailed to Peter Low at Cablevision in September 1996), attached hereto as Exhibit C. All negotiations after July 1996 concerned post-WBIS launches.

Channel Capacity

15. Cablevision never raised the issue of channel capacity as a reason for denying coverage during its negotiations with CSN. Answer, pp. 5-6, ¶ 10. Cablevision has found room for its own brand new programming service, Romance Classics. Also, Cablevision has announced that ASC, which has yet to launch, will replace NewSport on July 9.

Cablevision's Disparagement Of CSN

16. Well over 60% of CSN's programming in any given week is categorically exclusive to CSN. A

representative schedule is attached to the Reply as Exhibit D. Answer p. 14, ¶ 30.

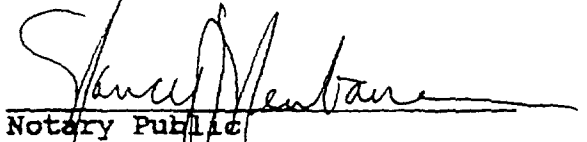
17. Cablevision did not impugn the quality of CSN's programming at any time during the course of dealing with CSN. In fact, Shuken and Bair complimented CSN on its programming and acknowledged the strong following the Service had acquired in the New York market. Answer, pp. 5-6, ¶ 10.

Timing Of The Complaint

18. CSN's Complaint was not filed to impede the launch of ASC. Answer p. 3, ¶ 4. To begin with, Cablevision is wrong about the timing of CSN's Complaint. Once it became clear that Cablevision would not provide carriage to CSN unless it ceded to Cablevision's demands for an ownership interest or exclusivity, CSN began preparation of the Complaint. See Minutes of the Board of Directors Meeting of Classic Sports, Inc. Dated February 12, 1997, attached to the Reply as Exhibit G. On February 28, 1997, the notice required by 47 C.F.R. § 76.1302(a) was sent to James Dolan. See Complaint at Exhibit 1. The ten-day waiting period began to run on March 3, 1997. Thus, Friday, March 14, 1997 was the earliest date at which the Complaint could be filed. Because CSN was compelled to obtain new counsel due to a possible conflict of


Stephen D. Greenberg

Subscribed and sworn to before me this 8th day of
May, 1997.


Notary Public

My Commission expires:

NANCY J. NEUBAUER
Notary Public, State of New York
No. 01NE5041602
Qualified in New York County
Commission Expires April 10, 1999

US OFFICE PRODUCTS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
CLASSIC SPORTS NETWORK, INC.,)
Complainant)
v.)
CABLEVISION SYSTEMS CORPORATION)
Defendant.)

File No. _____

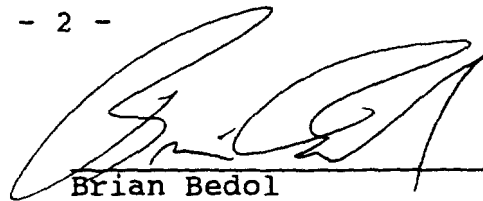
AFFIDAVIT OF BRIAN BEDOL

State of New York)
) ss:
County of New York)


Brian Bedol, being duly sworn, hereby states as follows:

1. My name is Brian Bedol. I am the Chief Executive Officer of the complainant in the captioned action, Classic Sports Network, Inc. ("CSN"). This affidavit is made in conjunction with CSN's Complaint Reply and in response to the Answer filed by Cablevision Systems Corporation.

2. I have read the Complaint and Reply in this matter. To the best of my knowledge, information and belief formed after reasonable inquiry, the Complaint and Reply are well grounded in fact and is warranted under Commission regulations and policies. The Complaint and Reply are not interposed for any improper


Brian Bedol

Subscribed and sworn to before me this ^{8th} day of
~~March~~, 1997.
May


Notary Public

My Commission expires:

NANCY J. NEUBAUER
Notary Public, State of New York
No. 01NE5041602
Qualified in New York County
Commission Expires April 10, 1999

US OFFICE PRODUCTS

To: All WBIS/Classic Sports Affiliates

From: Brian Bedol and Steve Greenberg

Date: September 16, 1996

Re: Extension of Carriage on WBIS

Since Classic Sports began being carried on WBIS on July 1, we have attempted to keep you posted on our programming schedule and other developments that we thought you and your customer service representatives would need to know.

Although it is not yet official, we want to give you a heads up to the fact that Classic Sports Network will continue to be carried on WBIS through January 20. As of that date Classic Sports will no longer be available as part of WBIS's daily programming. An official announcement will be forthcoming toward the end of September.

Customer response to Classic Sports throughout the New York Metropolitan area remains exceptionally positive. The steady flow of cards, letters, phone calls and e-mails to our office has escalated since Labor Day.

We hope to work closely with you to provide for a smooth transition from WBIS onto your cable system. There are a number of extremely positive messages that can be sent to your customers at that time:

- Classic Sports Network is no longer available over the air: now the **only** place you can see Classic Sports in on **cable!**
- Classic Sports is now available **24 hours a day!**
- As part of our local marketing effort, your customers will now be eligible to win **tickets to local sporting events** and other prizes as part of Classic Sports Network's unique marketing initiatives. In addition, your system will be eligible to receive our co-op marketing support and valuable local advertising avails.

September 16, 1996
WBIS/Classic Sports Affiliates
Page Two

Meanwhile, our ratings are getting higher each week as the word of mouth spreads. Enclosed are the latest ratings for New York City for September 6-8. As you can see, we are **consistently pulling 1.0 to 2.0 during prime time**. Imagine the local ad sales potential. We offer affiliates 3 minutes per hour!

Please contact any of us at your convenience, if you have any questions or want to discuss how you may continue to make Classic Sports Network available to your customers after January 20.

We guaranty that Classic Sports Network will continue to deliver high levels of viewership and satisfaction to your most valuable customers.

Local Contacts: (212) 529-8000

Brian Bedol, CEO, ext. 230

Steve Greenberg, President, ext. 232

Lisa Tassone, Director, Affiliate Sales -- Eastern Region, ext 345

**Sunday 5/11**

1	Classic Sports Legends	06:00	Classic Sports Legends	06:00	Classic Sports Legends	06:00	Classic Sports Legends	06:00	Classic Sports Legends	06:00	Classic Sports Legends
0	Sports Challenge	06:30	Sports Challenge	06:30	Sports Challenge	06:30	Sports Challenge	06:30	Sports Challenge	06:30	Sports Challenge
0	Home Run Derby	07:00	Home Run Derby	07:00	Home Run Derby	07:00	Home Run Derby	07:00	Home Run Derby	07:00	Home Run Derby
0	The Main Event	07:30	The Main Event	07:30	The Main Event	07:30	The Main Event	07:30	Classic Years In Sports	07:30	Classic Years In Sports
0	Encore on Ice	08:00	The Boys of Summer	08:00	Clash for The Cup	08:00	Center Court Classics	08:00	Golf and All It's Glory	08:00	Roller Super Stars
0		08:30		08:30		08:30		08:30		08:30	
0	The Way It Was	09:00	The Way It Was	09:15	The Way It Was	09:00	The Way It Was	09:00	The Way It Was	09:00	Golden Age of Wrestling
5	Tonight at The Fights	09:45	Tonight at The Fights	09:30		09:45	Tonight at The Fights	09:45	Tonight at The Fights	09:30	Golden Age of Wrestling
10	Classic Sports Legends	10:00	Classic Sports Legends	10:00	Classic Sports Legends	10:00	Classic Sports Legends	10:00	Classic Sports Legends	10:00	NBA on Classic Sports
10	Classic Sports Legends	10:30	Classic Sports Legends	10:30	Classic Sports Legends	10:30	Classic Sports Legends	10:30	Classic Sports Legends	10:30	Classic Sports Legends
10	NFL Films Theater	11:00	NFL Films Theater	11:00	NFL Films Theater	11:00	NFL Films Theater	11:00	NFL Films Theater	11:00	NFL Films Theater
10	NFL Films Theater	11:30		11:30	NFL Films Theater	11:30	NFL Films Theater	11:30		11:30	
00	Phi Beta Classics	12:00	Masters on Monday	12:00	Tonight at The Fights	12:00	Frozen In Time	12:00	Superstars	12:00	Classic Sports Legends
10		12:30		12:30		12:30		12:30		12:30	Classic Sports Legends
00	NBA on Classic Sports	13:00	Masters on Monday	13:00		13:00		13:00	Superstars	13:00	The Way It Was
10		13:30		13:30	Tonight at The Fights	13:30		13:30		13:30	The Way It Was
00	Center Court Classics	14:00	The Boys of Summer	14:00	Classic Sports Presents	14:00		14:00	Distant Replay	13:45	Links To The Past
10		14:30	The Main Event	14:30	The Main Event	14:30		14:30	The Main Event	14:30	
00		15:00	NFL Throwbacks G.O.W.	15:00	Clash for The Cup	15:00	Center Court Classics	15:00	NFL Films Theater	15:00	Friday Night at The Fights
10		15:30	NFL Throwbacks G.O.W.	15:30		15:30		15:30		15:20	Friday Night at The Fights
10		16:00	Frozen In Time	16:00	The Diamond Collection	16:00	NFL Films Theater	16:00	Phi Beta Classics	16:00	
10		16:30	Frozen In Time	16:30		16:30		16:30		16:45	Friday Night at The Fights
00	Classic Years in Sports	17:00	The Boys of Summer	17:00		17:00	NFL Films Theater	17:00		17:00	
10	Reflections In Gold	17:30		17:30		17:30		17:30		17:30	
00	Home Run Derby	18:00	Home Run Derby	18:00	Home Run Derby	18:00	Home Run Derby	18:00	Home Run Derby	18:00	The Diamond Collection
00	Sports Challenge	18:30	Sports Challenge	18:30	Sports Challenge	18:30	Sports Challenge	18:30	Sports Challenge	18:30	
00	Masters on Monday	19:00	Classic Sports Legends	19:00	Classic Sports Legends	19:00	Classic Sports Presents	19:00	Golf and All It's Glory	19:00	
00		19:30	Classic Sports Presents	19:30	The Main Event	19:30	Distant Replay	19:30		19:30	Classic Years in Sports
00	Masters on Monday	20:00	The Diamond Collection	20:00	NFL Films Theater	20:00	NFL Films Theater	20:00	Friday Night at The Fights	20:00	NFL Films Theater
10		20:30		20:30		20:30		20:20	Friday Night at The Fights	20:30	
10	NFL Throwbacks G.O.W.	21:00		21:00	NFL Films Theater	21:00	Phi Beta Classics	21:00		21:00	Phi Beta Classics
10	NFL Throwbacks G.O.W.	21:30		21:30		21:30		21:45	Friday Night at The Fights	21:30	
00	The Boys of Summer	22:00	Sports Challenge	22:00	Frozen In Time	22:00		22:00		22:00	
00		22:30	The Main Event	22:30		22:30		22:30		22:30	
00	Frozen In Time	23:00	Home Run Derby	23:00		23:00	Distant Replay	23:00	The Way It Was	23:00	The Diamond Collection
00	Frozen In Time	23:30	Classic Sports Presents	23:30		23:30	NFL Films Theater	23:45	NFL Films Theater	23:30	
00	NFL Throwbacks G.O.W.	00:00	The Diamond Collection	00:00		00:00		00:00	Friday Night at The Fights	00:00	
00	NFL Throwbacks G.O.W.	00:30		00:30		00:30	Phi Beta Classics	00:20	Friday Night at The Fights	00:30	
01:00	The Boys of Summer	01:00		01:00	NFL Films Theater	01:00		01:00		01:00	Phi Beta Classics
01:30		01:30		01:30		01:30		01:45	Friday Night at The Fights	01:30	
02:00	Masters on Monday	02:00	Tonight at The Fights	02:00	Frozen In Time	02:00		02:00		02:00	
02:30		02:30		02:30		02:30	Center Court Classics	02:30		02:30	
03:00	Masters on Monday	03:00		03:00		03:00		03:00	Roller Super Stars	03:00	Roller Super Stars
03:30		03:30	Tonight at The Fights	03:30		03:30	Classic Sports Presents	03:30		03:30	
04:00	NBA on Classic Sports	04:00	The Boys of Summer	04:00		04:00	Golf and All It's Glory	04:00	Golden Age of Wrestling	04:00	Golden Age of Wrestling
04:30		04:30		04:30		04:30		04:30		04:30	
05:00	The Boys of Summer	05:00	The Boys of Summer	05:00	The Boys of Summer	05:00	The Boys of Summer	05:00	The Boys of Summer	05:00	Home Run Derby
05:30	Classic Sports Legends	05:30	Classic Sports Legends	05:30	Classic Sports Legends	05:30	Classic Sports Legends	05:30	Classic Sports Legends	05:30	Classic Sports Legends

FUTURE LAUNCH FORM

To: Steve Greenberg

The following system has indicated that it intends to launch Classic Sports Network in the future:

MSO: Cablevision

System: Bureau, OH
(location)

Planned Launch Date: Oct 1, 1997

of Subs: 5000

Signature of CSN Rep: D. J. Jaka

Date submitted: 9-25-96

cc: Brian Bedol
Heather Murrell
Scott Marshall
Jean Crysler

Jerry Frantz
Larre Barrett
Douglas Warshaw
Anastas Kobinah

Leigh Threlkel
Barbara Hayes
Affiliate Sales

ACTUAL LAUNCH FORM

To: Steve Greenberg

I have confirmed that the following system has actually launched
Classic Sports Network:

MSO: Cablevision

System: Berea OH
(location)

of Subs: 5,000 # of CSN Subs: 4,990

Actual Launch Date: Oct 1 1996

Channel #: 59

Level of Carriage (Circle One)

CPS

Tier

If Tier, list other services: _____

Send Marketing Materials to: Attn: Offc. Mgr
395 W. Bagley Rd
Berea, OH 44017

Signature of CSN Rep: D. Lake

Date submitted: 10-31-96

cc: Brian Bedol
Heather Murrell
Scott Marshall
Jean Crysler

Jerry Frantz
Larre Barrett
Douglas Warshaw
Anastas Kobinah

Leigh Threlkel
Barbara Hayes
Affiliate Sales

